

Testimony of Representative Edward J. Markey (D-MA)
Rules Committee Hearing on the Rule Providing for
Consideration of H.R. 10,
The “9/11 Commission Recommendations Implementation Act of
2004”
October 5, 2004

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today.

The reason that I am here today is that a few weeks ago, I attend a memorial service in Framingham, Massachusetts to honor 17 people who died on September 11th. Many people outside of Massachusetts forget that two of the planes that the Al Qaeda used on September 11th – American Flight 11 and United Flight 175, took off from Boston’s Logan International Airport and who . But in Massachusetts, we have not forgotten, and this September 11th, we gathered in Framingham to dedicate a monument to 17 men and women from the community who lost their lives three years ago as the planes they had boarded were first hijacked and then turned into bombs.

As I talked to the 17 families of the dead, each of them asked me to do whatever I could to see to it that the 9/11 Commission recommendations are fully implemented. The bill that is before the Committee, H.R. 10, does not do that. There are dozens of 9/11 Commission recommendations that stand, unaddressed in the bill – that stand ignored. Meanwhile, there are numerous extraneous provisions that have nothing to do with anything the 9/11 Commission ever called for that have mysteriously appeared in this bill.

I am therefore asking the Rules Committee to approve an open Rule for consideration of H.R. 10, the “9/11 Commission Recommendations Implementation Act.” Given the importance of this legislation, and the numerous flaws in the bill that is now pending before the Committee, only an open rule that allows for a free and open debate on this

legislation will give the House the opportunity it needs to ensure that the recommendations of the 9/11 Commission are faithfully implemented.

An article that appeared in the Boston Globe last Sunday has highlighted the problems associated with the Rules Committee's increasing practice of reporting closed rules for major legislation. The Globe article reported that:

“Only five times this year were House members allowed to amend policy bills on the floor, and only 15 percent of bills this year were open to amendment. For the entire 108th Congress, just 28 percent of total bills have been open to amendment -- barely more than half of what Democrats allowed in their last session in power in 1993-94.”

The Globe also reported that “in the current Republican-led Congress, according to statistics offered by both parties, the percentage of nonappropriations bills open to revision has dropped to 15 percent.” This is substantially lower than the percentage of closed rules considered when the Democrats were in the majority. The Globe, citing figures issued by the then-minority Republicans in the 95th Congress, reports that 85% of the non appropriations legislation considered by the House was considered under an open rule. By the period 1993-94, that percentage had dropped to 57% overall and 30% for nonappropriations bills. This led our former colleague, Rep. Solomon from New York, to pledge that when the Republicans took the majority they would make the vast majority of bills open. But, that clearly has not happened. The number of open rules is half that of what it was in the last two years of a Democratic Majority.

These statistics are disturbing, and they I believe it is time for the Republican Majority to bring democracy and debate back to the Peoples' House. The 9/11 bill is a good place to start. Homeland security should not be a partisan issue. Defending our people against another terrorist attack is not a Republican issue; it is not a Democratic issue. It is an issue that all Americans care about equally. If there is any bill that

should be openly debated so that we get it right, it is this bill. But I have been informed that the fix is already in, and that the House Republican Leadership plans to report out a closed rule, a rule that will not even allow Democrats to offer substitutes or offer amendments opposed by the Republican Leadership. I would like to urge you to reconsider this.

There are four amendments I would have like to offer to the bill, and I would like to have them considered under an open rule. They deal with the issue of whether we are going to allow this bill to legitimize the practice of torture, whether we are going to actually require all air cargo to be screened, whether we are going to put in place real protections for government whistleblowers who may face retaliation when they try to report threats to homeland security, and whether we are going to protect chemical and nuclear facilities from terrorist attacks. Let me briefly describe each amendment.

Torture

H.R. 10 contains two provisions (Sections 3032 and 3033) that would facilitate the deportation or rendition of certain foreign persons to countries where they are more likely than not to face torture.

- Section 3032 would require the Secretary of Homeland Security to issue rules that would “exclude” certain foreign persons from the protection of the regulations issued to implement the Convention Against Torture, including those that the Secretary determined pose a danger to the U.S.
- Section 3033 would give the Secretary of Homeland Security virtually unfettered discretion to deport, transfer, or render a foreign person to any country in the world – regardless of whether the country that the foreign person is a citizen of and regardless of whether they have a residence there or have even been there.

These provisions are inconsistent with the treaty obligations that the United States assumed when it signed and ratified the Convention Against Torture, and they would legitimize the practice of “extraordinary rendition” of foreign persons to countries where they may be interrogated using torture. Transferring or deporting persons to countries where they face torture violates international law. Article 3 of the Convention Against Torture, which the U.S. has signed and ratified, prohibits sending a person to another state “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

I would like to be able to offer an amendment to strike the provisions of H.R. 10, which allow the U.S. to outsource torture by deporting certain foreign persons to countries where they are likely to face torture. My amendment would replace these provisions with language prohibiting the transfer of any person in the custody of the U.S. by the Secretary of State to a country that commonly uses torture or cruel, inhuman or degrading treatment in interrogation and detention.

The White House, the 9/11 Commission as well as a coalition of human rights organizations, religious groups, torture victims groups, and civil rights groups, have all expressed opposition to the torture outsourcing language in H.R. 10. It should be removed.

Air Cargo

For the past year, Members on both sides of the aisle have supported closure of the cargo security loophole, which permits tons of freight to be loaded on passenger and all-cargo planes every year without being physically screened for explosives or other dangerous materials.

The “Victims of Pan Am Flight 103”, who know first-hand about the devastation that terrorists can cause using unscreened baggage, has supported closure of the cargo loophole.

The Coalition of Airline Pilots Associations, which represents 30,000 pilots at major airlines like Southwest and UPS, has supported closure of the cargo loophole.

The Association of Flight Attendants, with its 46,000 members across the country, has supported closure of the cargo loophole.

And when the 9/11 Commission released its report in July, the report described how terrorists had planned to use explosives packed in cargo to attack our country before September 11th. On page 225, the Commissioners wrote:

“In the Fall of 2000, Khalid Sheik Muhammed [KALEED SHAKE MOHOMED] had sent Moussaoui [MASOWEE] to Malaysia for flight training, but Moussaoui [MASOWEE] did not find a school he liked. He worked instead on other terrorist schemes, such as buying four tons of ammonium nitrate for bombs to be planted on cargo planes flying to the United States.”

Ammonium nitrate is the same material that Timothy McVeigh used to kill 168 people in the Oklahoma City bombing.

My cargo amendment – which I am pleased to be offering with my distinguished colleague Martin Frost - would require that all the cargo carried on passenger and all-cargo planes be physically inspected before it's loaded onboard.

I urge the Committee to permit our cargo amendment to be considered on the House Floor during debate on H.R. 10.

Whistleblower Protection

I also would like to offer an amendment to ensure that whistleblowers in the intelligence and homeland security communities have adequate protections from retaliation.

Coleen Rowley, the FBI whistleblower who believed the FBI could have done more to thwart the 9-11 terrorists, said in a letter to the Senate urging whistleblower reforms that:

“Government employees who warn their superiors and other appropriate authorities of significant problems need credible, functioning rights and remedies to retain the freedom to warn”

Unfortunately, whistleblower protections for homeland security and intelligence community personnel are nowhere near credible or functioning:

- The intelligence agencies are largely exempt from the whistleblower protections given to the rest of the federal workforce and any administrative processes they do have access to do not include a remedy if they are found to have been retaliated against.
- When Congress exempted TSA from personnel regulations, the exemption also included whistleblower protections.

I would like to be able to offer an amendment that corrects these inequities so that these modern day Paul Reveres who are retaliated against for bravely warning us of danger are able to obtain justice and be made whole. Specifically, my amendment would:

- Ensure that the administrative protections offered to intelligence community and homeland security whistleblowers are as strong as those offered to other government workers
- Extend the protections given by Congress in the Sarbanes Oxley bill allowing corporate whistleblowers to go to civil court if the administrative complaint hasn't been ruled on within 180 days to federal employees

- Allow any whistleblower retaliated against for communicating with Congress to take their case straight to civil court without delay.

Nuclear and Chemical Security

I would also like to restore language to H.R. 10 that Representative Nadler (D-NY) had successfully attached to the bill in the Judiciary Committee, which adopted the amendment by voice vote. This amendment was drawn from legislation that I authored.

Guess what? When we received the text of the version of H.R. 10 that will be considered on the House floor this week, the Nadler-Markey language mysteriously disappeared. I would like to be able to offer an amendment to H.R. 10 to restore this language, which would strengthen security at nuclear facilities and the transportation of extremely hazardous materials

The amendment I would like to offer, along with Mr. Nadler, takes a common-sense approach to these serious security matters. The nuclear facilities security provisions of our amendment are almost identical to the bipartisan consensus language that was voted on favorably by the full House of Representatives during debate on the energy bill in the past two Congresses.

- It directs the President, in consultation with the Nuclear Regulatory Commission, to assess the terrorist threat nuclear reactors face in light of the events of September 11, and then inform both Congress and the NRC what the federal government role is in protecting these plants.
- The federal government must then assume its role in assuring security at nuclear facilities, and the NRC must undertake a permanent rulemaking to upgrade the security measures it is responsible for overseeing.

- The NRC must also establish a new force-on-force mock terrorist attack program using highly trained NRC personnel (instead of personnel hired by the nuclear industry lobbying group, which is the current Bush Administration plan) to test security at each nuclear facility.

The hazardous materials provisions address the risk posed by the hundreds of thousands of shipments of extremely hazardous materials that each day travel through densely populated areas and near critical infrastructure.

The U.S. Naval Research Lab has said that a successful attack on just one such rail car full of chlorine could cause 100,000 injuries and deaths in half an hour, with as many as 100 deaths per second. An Ohio-based Al Qaeda operative was even arrested for plotting to collapse a bridge in New York City or derail a train in DC. Yet there has been no national planning to re-route and better secure the dangerous shipments that could be used as weapons of mass destruction against us.

Our amendment calls on DHS to promulgate regulations that would increase the security of shipments of extremely hazardous materials such as those that are toxic by inhalation, and those that are highly explosive or highly flammable. The security measures include extra physical security measures, better coordination between Federal, State, and local authorities, first responders and shippers of extremely hazardous materials, whistleblower protections for those who are retaliated against for disclosing security flaws associated with shipments of extremely hazardous materials, training for employees who work with extremely hazardous materials shipments, and re-routing of shipments of extremely hazardous materials that currently travel through areas of concern **only if there is a safer route available.**

Conclusion

I believe that each of the three amendments I have just describe deserve to be considered by the House, and that they should be debated and voted upon under an open rule. I believe that their adoption would help ensure that the 9/11 bill actually helps implement the recommendations of the 9/11 Commission. In addition, I am aware that the Democratic Leadership wishes to offer an amendment in the nature of a substitute to the bill. I support this substitute, and would also urge the Committee to make it in order to be considered under an open rule. Thank you for your consideration.